

REMARKS

This is a reply to the Office Action mailed November 4, 2003, with a shortened statutory response period of three (3) months from the mailing date, extended two months by Petition filed herewith. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-64 are presently pending in the application. Claims 65 and 66 have been canceled. Claims 1-64 stand rejected and Applicants respectfully traverse these rejections.

I. Double Patenting Rejections

Claims 30-40 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 98-126 of co-pending Application No. 10/021,692. Claims 98-126 have been canceled from the '692 Application thereby mooting these rejections.

II. Rejections under 35 U.S.C. §103

The Examiner has rejected claims 1-64 under 35 U.S.C. §103(a) in view of *Stainmesse* and *Cima*. Applicants respectfully traverse these rejections.

Stainmesse discloses a method for preparing a dispersible colloidal system of **spherical** particles of the matrix type having a size less than 500 nm. (Col. 1, lines 10-14) *Stainmesse* is particularly concerned with the production of spherical particles exhibiting only a slight variation in size. (Col. 5, lines 16-17). *Stainmesse* reports that the nanoparticles prepared in the Examples "appear as approximately round, non-contrasted particles." (Col. 5, lines 18-22) *Stainmesse* reports in Example 1 that it has achieved particles in the form of regular spheres (col. 5, lines 49-51). Example 2 reports that the particles obtained have the same properties as in Example 1. Example 14 states that the particles are spherical and non-crystalline (col. 8, lines 65-67).

Cima discloses that the crystal habit, size, polymorphic form and other properties of a particle can be altered by techniques such as adding a seed compound to cause crystallization. *Cima* teaches that "in some cases, direct seeding of crystallization reactions will result in an increased diversity of crystal forms being produced." (Paragraph [0123] Thus, *Cima* cannot be combined with *Stainmesse* as the purpose of *Stainmesse* is to prepare spherical particles. *Cima* discloses if you add a seed compound you may observe a change in the crystal habit and size of

the particles. Because the method of *Stainmesse* is to produce spherical particles with a small size distribution, it would be antithetical to its purpose to add a seed compound which would very likely alter the desired shape and size. Accordingly, these references teach away from combining them, and, therefore, the Examiner has failed to present a *prima facie* case of obviousness. Applicants respectfully request a withdrawal of these rejections.

Applicants have amended the specification to properly include "glyceryl esters" in the group of nonionic surfactants instead of in the group of anionic surfactants, and have also amended claims 4-5, 48-50 to change the grammatically incorrect phrase "adding-energy" to "energy-addition". No new matter has been added by these amendments.

In view of the foregoing amendments and remarks, Applicants submit the claims are in a condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,
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